

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH MICHAEL CZUCKO,

Defendant-Appellant.

UNPUBLISHED

December 13, 2011

Nos. 299429; 300287

Kent Circuit Court

LC No. 09-003402-FH

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 299429, defendant appeals as of right his sentences, following his jury trial convictions, for two counts of resisting arrest, MCL 750.81(d)(1). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to serve 46 months to 15 years in prison for each of these offenses. In Docket No. 300287, defendant appeals by leave granted his sentences, following his guilty plea, for unlawful driving away of an automobile (UDAA), MCL 750.413, and malicious destruction of police property greater than \$100, MCL 750.377(b). Defendant was sentenced, as an habitual offender, fourth offense, MCL 769.12, to 76 months to 30 years' imprisonment for the UDAA conviction and to 58 months to 15 years' imprisonment for the malicious destruction of police property conviction.¹ These appeals were consolidated by this Court in *People v Czucko*, unpublished order of the Court of Appeals, entered October 22, 2010 (Docket No. 300287). We affirm.

The sole issue presented in this appeal is whether defendant is entitled under the relevant statutes to credit against his felony sentences for presentence time served, despite being on parole from a Wisconsin felony sentence at the time he committed these offenses. Defendant acknowledges that credit for time served is not afforded to those on parole at the time of the commission of the sentencing offense, but seeks to distinguish himself from other parolees on

¹ Defendant also pleaded guilty to two misdemeanor offenses: escape from lawful custody, MCL 750.19(a), for which he was sentenced to 12 months in jail and against which he was credited with 248 days served; and driving while license suspended, MCL 257.904(1)(b), for which he was sentenced to serve 93 days in jail and against which he was credited with 93 days served. Those convictions and sentences are not at issue in this appeal.

the basis that Wisconsin will not give him credit for this time served in Michigan against his paroled sentence. The trial court concluded that, regardless whether Wisconsin will afford defendant credit for Michigan time served, defendant is not entitled to credit for his presentence time served against the instant Michigan felony sentences under MCL 769.11b, because his presentence incarceration was not the result of being denied or unable to furnish bond. We agree.

Whether defendant is entitled to credit for time served in jail between the time of his arrest and sentencing presents a question of law that this Court reviews de novo. *People v Idziak*, 484 Mich 549, 557; 773 NW2d 616 (2009); *People v Seiders (Seiders II)*, 262 Mich App 702, 705; 686 NW2d 821 (2004). As this Court explained in *Seiders II*:

Our function in resolving disputed interpretations of statutory language is to effectuate the legislative intent. When statutory language is clear, the Legislature intended the meaning plainly expressed, and we must enforce the statute as written. We presume that every word has some meaning, and we must avoid any construction that would render any part of the statute surplusage or nugatory. [*Id.* at 705 (citations omitted).]

Further, when construing a statute, this Court “must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme.” *People v Williams*, 268 Mich App 416, 425; 707 NW2d 624 (2005).

The right to credit for time served is wholly governed by MCL 769.11b. *Idziak*, 484 Mich at 569. See also *People v Prieskorn*, 424 Mich 327, 333; 381 NW2d 646 (1985); *Bowen v Recorder’s Court Judge*, 384 Mich 55, 58-59; 179 NW2d 377 (1970). MCL 769.11b states that

Whenever any person is hereafter convicted of any crime within this state and *has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted*, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing. [MCL 769.11b (emphasis added).]

In *Idziak*, 484 Mich at 562-563, our Supreme Court determined that a defendant is not entitled to credit for time served before sentencing if the sentencing offense was committed while the defendant was on parole for another felony offense; such a defendant is not incarcerated “because of being denied or unable to furnish bond” for the new offense as required by MCL 769.11b, but rather for the “independent reason” of his parole status for a prior offense. *Idziak* addressed application of MCL 769.11b to a Michigan parolee. In *Seiders II*, 262 Mich App at 707-708, this Court expressly concluded that “a defendant who is on parole from a foreign jurisdiction and held in jail on a parole detainer is [likewise] not entitled under MCL 769.11b to credit on his Michigan sentence for time served in jail before sentencing.”

Defendant argues that *Seiders* is distinguishable because there was no indication that this Court considered whether the defendant would receive credit against his paroled sentence for his time served in Michigan. Contrary to this assertion, we observe that *Seiders II* expressly overruled *People v Johnson*, 205 Mich App 144, 147; 517 NW2d 273 (1994), in which this

Court concluded that MCL 769.11b required that credit for time served be awarded to the defendant, on parole from a Louisiana sentence, because the Court lacked the authority to order Louisiana to credit the defendant with time served in Michigan towards his paroled sentence. *Seiders II*, 262 Mich App at 708. The decision in *Seiders II* is consistent with the plain language of MCL 769.11b, which simply does not call for consideration of whether defendant will receive credit for the time served against another sentence. Rather, as the *Seiders II* Court emphasized, the proper inquiry under MCL 769.11b is whether a defendant remains incarcerated between the time of his arrest and sentencing *because he is denied or unable to furnish bond*. *Id.* at 707-708; see also *People v Meshell*, 265 Mich App 616, 638-640; 696 NW2d 754 (2005). In such cases, and only in such cases, is a defendant entitled to credit for presentence time served. MCL 769.11b; *Seiders II*, 262 Mich App at 707-708.

Defendant was not incarcerated between the time of his arrest and his sentencing because he had been denied or was unable to furnish bond; rather, his incarceration was the result of his status as a parolee at the time of the commission of the charged offenses. Accordingly, MCL 769.11b is not applicable in this case. *Seiders II*, 262 Mich App at 702; see also *Idziak*, 484 Mich at 562-563, 568.²

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Douglas B. Shapiro

² We note that, despite defendant's parolee status, bond was set in this case. However, a defendant held on a parole detainer is not entitled to bond and, consequently, that bond may have been set in such cases is of no consequence to the unavailability of credit for time served under MCL 769.11b. *People v Johnson*, 283 Mich App 303, 308; 769 NW2d 905 (2009); *People v Filip*, 278 Mich App 635, 642; 754 NW2d 660 (2008). Defendant does not assert otherwise.